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Supreme Court, U.S.
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No. 00-1630

In the

United States Supreme Court

PROFESSOR RAJANI KANTH
PRO SE Petitioner/Appellant

Vs.

CORY KANTH
Respondent / Appellee

On Petition For A Writ Of Certiorari
To The United States Court Of
Appeals For The Tenth Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S BRIEF IN REPLY

ARGUMENT:

In her **Brief in Opposition**, to which this is the **Reply**, Respondent maintains the following principal arguments:

1. That her surreptitious abduction of the Kanth children on March 25th , 1999 from the Kanth home in Sydney, Australia was not 'wrongful' as defined under the Hague Convention against International Child Abduction in Article 3 of the Convention.
2. That the 'Intent' of the Petitioner in moving to Australia (not once but twice) on a permanent job offer was 'temporary' ,
3. That this Petitioner 'acquiesced' to the abduction , given the structure of a personal letter to Respondent's father, under a permissible defense as given by Article 13a of the Convention.

Given that Arguments 1 and 2 are the very arguments upheld by the District and Circuit Courts - and indeed form the basis of their judgments which are at issue in this Petitioner's plea for issuance of a Writ of Certiorari and under challenge, in some detail of fact and argument, in the original Petition - it would be quite superfluous to be adding further comment here.

The Petition at issue , for the Writ of Certiorari, should properly address only errors and elisions in the earlier Court judgments, not the various ad hoc and/or ancillary arguments of the Respondent. As such, in this regard, Argument#3 should not really elicit any comment here , particularly since neither the District Court nor the Circuit Court judgments lean on it in any important manner.

However, Petitioner, herewith , out of respect for process, offers a very brief critique of the 'acquiescence' charge, placing it in context of the general principles governing a Hague Convention Case(an examination of the *contents* of the letter, it will become apparent, gainsays the generous interpretive latitude that Respondent allows herself in her **Brief in Opposition**):

1. The letter in question, authored by the Petitioner, is to a *third party* (legally uninvolved in these proceedings), addressed to *Respondent's father,* not to the Respondent directly.
2. The letter is dated April 5, 1999, i.e. barely ten days or so after the abduction, authored in a state of turmoil and shock , as might be expected to prevail in a situation of a child abduction.
3. The letter was scribed, in a state of ignorance (the Hague Convention is an obscure international Treaty hardly known to lay personnel), *well before Petitioner was aware of his legal rights as per the Hague Convention.* Indeed, his Hague petition was filed only a few weeks later on May 14th, 1999.
4. Nonetheless, the letter, *at the very top of the agenda, as a primary option,* indicates that the Petitioner has a *permanent* job *in Australia;* and that Respondent could have one there, too, if she so chooses (the 'choice' was being offered to the Respondent, not to the children). In effect, the letter begins with a plea for what the Convention would understand as a *'Voluntary Return'* of the children prior initiating legal proceedings. Indeed this is in conformity with the US State Dept , the executive department administering the Convention in the US, that wrote to the Respondent in

the same time period asking for such a voluntary return.

5. It also indicates, as a scenario, subject to bilateral understanding, that Petitioner was willing to consider, but as a secondary option, a *future* return to the US.
6. At no time or place in the letter does the Petitioner suggest that he was content with any of the actions taken by the Respondent *as they pertain to the children.*
7. Similarly at no place in the letter does the Petitioner indicate that he was surrendering his legal rights *via s vis* his children, and against the Respondent, nor sanctioning their unlawful seizure by the Petitioner. As such, Petitioner was not granting the Respondent any absolution for the transgression in question.
8. A defense under Article 13 a (or Article 13 more generally) needs be established by a *preponderance of evidence* (i.e., a *single letter*, addressed to a *third party*, replete with equivocal content will not suffice: such a document needs be placed in context of *all the facts* of the case) : in effect the burden of proof on the Respondent is heavy. Even if such a decisive burden of proof were to be forthcoming from the Respondent – *and it is not* - the implication for Court is simply that they are no longer under obligation to fulfill the mandatory *duty* to order the return of children demanded by the Convention (Article 7 requires the Central Authority to take all possible steps to secure the return of the Abductees; and Article 12 requires that Orders shall be made for return of the child forthwith).This still leaves open their option (judicial discretion) to return the children in keeping with the principal aim of the Convention. Indeed, at the second Special Commission reviewing the operation of the Convention (18-21 January 1993)

> Mr.Adair Dyer (First Secretary) stressed that Article 13 counteracts the main aim of the Convention – to secure the Return of the wrongfully abducted – and ,as such, the exceptions should be used very carefully, perhaps not at all, and certainly always with great circumspection.

Given the foregoing, it is clear that, on any reasonable review of the matter, that a single letter, authored in a crisis state, prior to any information on his legal rights (the Hague Convention is a rather obscure Treaty hardly known to lay people), addressed to a third party, and quite equivocal in its content, is enough to deny the intent of the Convention or the Wrongful nature of the abduction in question, let alone deter the magistracy from their obligation to return international Abductees, in this case, to the Petitioning parent.

As such, the Respondent's **Brief in Opposition** adds little that is effective, or even relevant, to arguments previously made in the history of this case.

Respectfully,

Professor Rajani Kanth
Salt Lake City, Utah , June 4, 2001